IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 8219 of 2001 (O&M)
DATE OF DECISION: November 22, 2007

Jagdev Singh

…Petitioner

Versus

Pepsu Road Transport Corporation, Patiala and others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

Present: None.

JUDGMENT

M.M. KUMAR, J.

The petitioner in the instant petition filed under Article 226 of the Constitution, has challenged order dated 15.1.2000 (P-7) whereby recovery for a sum of Rs. 70,066/- has been ordered and recovered from him since July, 2000. Further it has been prayed that respondents may be directed to release 29 days leave encashment which is stated to have been withheld without any reason.

During the pendency of the writ petition, Civil Misc. No. 809 of 2006 was filed for placing on record orders passed by various Division Benches of this Court in the cases of **Hardeep Singh v. PRTC (CWP No. 10192 of 201, decided on 22.9.2003); Hari Ram v. M.D. PRTC (CWP No. 11880 of 2002, decided on 3.5.2004); Mukand Singh v. M.D. PRTC, Patiala (CWP No. 12667 of 2003,**

decided on 13.5.2004), Single Bench judgment of this Court in the case of **Madan Lal v. State of Punjab and others (CWP No. 15499 of 2000, decided on 29.8.2005)** as well as judgment passed by Letters Patnt Bench in the case of **PRTC v. Madan Lal (LPA No. 190 of 2005, decided on 12.12.2005)** with a prayer to dispose of the instant petition claiming that the controversy involved in the instant petition is squarely covered by the aforesaid orders. Another Civil Misc. No. 12421 of 2007 has been filed on behalf of the petitioner to place on record judgment of Hon'ble the Supreme Court in the case of **Sahib Ram v. State of Haryana, 1995 (1) SCT 668,** as well as a Division Bench judgment of this Court, of which I am also one of the Member, in the case of **Resham Singh v. PRTC and others (CWP No. 20560 of 2006, decided on 10.5.2007)** and again it has been prayed that instant petition may be disposed of in terms of the aforesaid judgments. Notice of the aforementioned applications were issued, however, no reply by the respondents has been filed.

After perusing the record I find that the issue involved in the instant petition is not *res integra*. It is trite to notice that no recovery can be fastened on a person when there is no element of fraud or misrepresentation on the part of the employee. Reliance in this regard may be placed on the judgment of Hon'ble the Supreme Court in case of **Sahib Ram (supra),** wherein it has been categorically held that no recovery could be effected from an employee in the absence of misrepresentation or fraud on his part.

In view of the above, impugned order dated 15.1.2000 (P-7) is quashed. The amount shall be released to the petitioner within one month from the date of receipt of certified copy of this order. The respondents are further directed to release 29 days leave encashment to the petitioner, in case the same has been withheld on account of recovery of Rs. 70,066/-.

Writ petition stands disposed of in the above terms.

(M.M. KUMAR)
JUDGE

November 22, 2007
Pkapoor